PHILIPPINE JURISPRUDENCE ON THE LACK OF DUE PROCESS ISSUE ARISING FROM THE APPLICATION OF THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION: AN ANALYSIS

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INTRODUCTION

A. Doctrine of Corporate Entity

Under the general doctrine of separate juridical personality, a corporation has a legal personality separate and distinct from that of the people comprising it.[2] By virtue of this doctrine, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder.[3] Thus, being an officer or a stockholder of a corporation does not make one's property the property also of the corporation.[4]

Doctrinally, a corporation is a legal or juridical person with a personality separate and apart from its individual stockholders or members and from any other legal entity to which it may be connected or related. It is not, in fact and in reality, a person but the law treats it as though it were a person by process of fiction thus facilitating the conduct of corporate business. The stockholders or members who, as natural persons, are merged in the corporate body, compose the corporation but they are not the corporation.[5]

The doctrine of corporate entity fills a useful purpose in business life and whether the purpose is to gain an advantage under the law of the state of incorporation or to avoid, or to comply with the demands of creditors or to serve the creator's personal or undisclosed convenience, so long as that purpose is the equivalent of business activity or is followed by the carrying on of business of the corporation, the corporation remains a separate entity. But the doctrine is one of substance and

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[2] Heirs of Tan Uy v. International Exchange Bank, G.R. No. 166282, June 16, 2019

[3] Philippine National Bank vs. Hydro Resources Contractors Corporation, G.R. No. 167530, Mar. 13, 2013
See Cesar L. Villanueva and Teresa S. Villanueva-Tiansay, *Philippine Corporate Law* (2013) 880. "x x x the corporate defenses of limited liability should still be available to stockholders of such close corporations."

[4] Traders Royal Bank v. Court of Appeals, G.R. No. 78412, Sep. 26, 1989

[5] See De Leon, Hector: The Corporation Code of the Philippines, Annotated; Eleventh Edition 2013, page 15

validity and courts will, in proper cases, disregarding forms and looking to substance, ignore the legal fiction of corporate entity.[6]

B. Doctrine of Piercing the Veil: Common Law Origin

Under the doctrine of piercing the veil of corporate fiction, the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.[7]

The said doctrine has its roots in common law countries[8] which, as a general rule in corporation law, uphold the principle of separate personhood but, in exceptional situations, may pierce the corporate veil.[9]

In the United States, corporate veil piercing is the most litigated issue in corporate law.[10] Although courts are reluctant to hold an active shareholder liable for actions that are legally the responsibility of the corporation, even if the corporation has a single shareholder, they will often do so if the corporation was markedly noncompliant with corporate formalities, to prevent fraud, or to achieve equity in certain cases of undercapitalization.[11]

In most jurisdictions, no bright-line rule exists and the ruling is based on common law precedents. In the United States, different theories, most important "alter ego" or "instrumentality rule", attempted to create a piercing standard. Mostly, they rest upon three basic prongs—namely:[12]

(a) "unity of interest and ownership": the separate personalities of the shareholder and corporation cease to exist;

(b) "wrongful conduct": wrongful action taken by the corporation; and

(c) "proximate cause": as a reasonably foreseeable result of the wrongful action, harm was caused to the party that is seeking to pierce the corporate veil.

Thus, the factors that a court may consider when determining whether or not to pierce the corporate veil can be said to include the following:[13]

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[6] Ibid.

[7] Pantranco Employees Association,, Inc. et. al. vs. NLRC, et. al., G.R. NO. 170689, March 17, 2009

[8] Like Germany, the United Kingdom and the United States

[9] Larson, Aaron (12 July 2016): "*Piercing the Corporate Veil*". *ExpertLaw*

[10] Thompson, Robert B. (1991), "Piercing the Corporate Veil: An Empirical Study", Cornell Law Review, 76: 1036–1074

[11] Gelb, Harvey (December 1982). "Piercing the Corporate Veil - The Undercapitalization Factor". Chicago Kent Law Review 59 (1) See also: Macey, Jonathan; Mitts, Joshua (2014). "Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil". Cornell Law Review 100

[12] *Rands, William J. (1998). "Domination of a Subsidiary by a Parent" (PDF). Indiana Law Review. 32: 421*

[13] *Barber, David H.* "Piercing the Corporate Veil". *Williamette Law Review*. 17: 371

(a) Absence or inaccuracy of corporate records;

(b) Concealment or misrepresentation of members;

(c) Failure to maintain arm's length relationships with related entities;

(d) Failure to observe corporate formalities in terms of behavior and documentation;

(e) Intermingling of assets of the corporation and of the shareholder;

(f) Manipulation of assets or liabilities to concentrate the assets or liabilities;

(g) Non-functioning corporate officers and/or directors;

(h) Significant undercapitalization of the business entity (capitalization requirements vary based on industry, location, and specific company circumstances);

(i) Siphoning of corporate funds by the dominant shareholder(s);

(j) Treatment by an individual of the assets of corporation as his/her own;

(k) Corporation being used as a "façade" for dominant shareholder(s) personal dealings

C. The Doctrine as Applied in Philippine Jurisprudence

1. Three Basic Areas

Not to be outdone, Philippine jurisprudence is likewise replete with cases wherein our Supreme Court had repeatedly, whenever apropos, applied this doctrine. Thus, in a long line of cases, including Martinez vs. Court of Appeals,14 GCC vs. Alson Development and Investment Corporation,15 Pantranco Employees Association, Inc., et al., vs. NLRC, e. al. 16 and Rivera vs. United Laboratories17, the fundamental rule states that this doctrine applies only in three (3) basic areas, namely:

1) When the corporate vehicle is used to defeat public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation;

2) In fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or

3) In *alter ego* cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

[14] G.R. No. 131673, 10 September 2004

[15] **G.R. No. 154975, January 29, 2007**

[16] G.R. No. 170689, March 17, 2009

[17] G.R. No. 155639, April 22, 2009

Parenthetically, the High Court is consistent in enunciating the basic rule, which states that in the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[18]

1. Alter ego rule

As regards the third basic area mentioned above -- the so-called *alter ego* rule, equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an *alter ego* of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

In this connection, case law[19] lays down a three-pronged test to determine the application of the *alter ego* theory, which is also known as the instrumentality theory, namely: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.[20]

The first prong is the "instrumentality" or "control" test. This test requires that the subsidiary be completely under the control and domination of the parent.[21] It examines the parent corporation's relationship with the subsidiary.[22] It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored.[23] It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."[24]

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[18] Subject to the exception which was applied by the Court in *Naguiat*, infra., wherein the High Tribunal said:

"The Court here finds no application to the rule that a corporate officer cannot be held solidarily liable with a corporation in the absence of evidence that he had acted in bad faith or with malice. In the present case, Sergio Naguiat is held solidarily liable for corporate tort because he had actively engaged in the management and operation of CFTI, a close corporation."

[19] Philippine National Bank vs. Hydro Resources Contractors Corporation (consolidated with Asset Privatization Trust vs. Hydro Resources Contractors Corporation and Development Bank of the Philippines vs. Hydro Resources Contractors Corporation), G.R. Nos. 167530, 167561 and 167603, March 13, 2013

[20] Concept Builders, Inc. v. National Labor Relations Commission, G.R. No. 108734 May 29, 1996

[21] Reed, Bradley: Clearing Away the Mist: Suggestions for Developing a Principled Veil Piercing Doctrine in China, Vanderbilt Journal of International Law 39: 1643, citing Stephen Presser, PIERCING THE CORPORATE VEIL, § 1:6, West (2004)

[22] Ibid., citing *White v. Jorgenson*, 322 N.W.2d 607, 608 (Minn. 1982) and *Multimedia Publishing of South Carolina, Inc. v. Mullins*, 431 S.E.2d 569, 571 (S.C. 1993)

[23] Ibid. citing Maurice Wormser: DISREGARD OF THE CORPORATE FICTION AND ALLIED CORPORATE PROBLEMS (1929)

[24] Ibid.

The second prong is the "fraud" test. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful.[25] It examines the relationship of the plaintiff to the corporation.[26] It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor.[27] As such, it requires a showing of "an element of injustice or fundamental unfairness."[28]

The third prong is the "harm" test. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered.[29] A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.[30]

The main issue which this Paper seeks to address and analyze is with regard to the lack of due process which may arise from the application of the said doctrine.

Indeed, there are a plethora of cases wherein our Supreme Court has to decide, among other issues, on the following:

> *Whether or not a third party, either natural or juridical, who was not impleaded nor was made a party to a case, can be adjudged to be solidarily liable with a party-litigant to a case as a consequence of the application of such doctrine.*

II. DISCUSSION AND ANALYSIS

A. Relevant Jurisprudence

***A.C. Ransom* case**[31]

In *A.C. Ransom*, the main issue is:

> "Is the judgment against a corporation to reinstate its dismissed employees with backwages, enforceable against its officers and agents, in their individual, private and personal capacities, who were not parties in the case where the judgment was rendered?"

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[25] Ibid.

[26] White v. Jorgenson, supra. footnote 18

[27] Reed, Bradley, supra. footnote 17

[28] White v. Jorgenson, supra. footnote 18, citing *Victoria Elevator Co. v. Meriden Grain Co*., 283 N.W.2d 509, 512 (Minn. 1979)

[29] Olthoff, Mark, Beyond the Form: Should the Corporate Veil Be Pierced?, 64 UMKC L. Rev. 311, 318 (1995)

[30] Ibid.

[31] "A.C. Ransom Labor Union-CCLU, *Petitioner***,** v. National Labor Relations Commission (First Division), A.C. Ransom (Phils.) Corporation, Ruben Hernandez, Maximo C. Hernandez, Jr., Porfirio R. Valencia, Laura H. Cornejo, Francisco Hernandez, Celestino C. Hernandez & Ma. Rosario Hernandez, *Respondents***"** (First Division, *J. Melencio-Herrera*), G.R. No. L-69494. June 10, 1986

The facts of the case, as culled from the decision, are as follows:

> "A.C. Ransom Corporation was a family corporation, the stockholders of which were members of the Hernandez family. In 1973, it filed an application for clearance to close or cease operations, which was duly granted by the Ministry of Labor and Employment, without prejudice to the right of employees to seek redress of grievance, if any. Backwages of 22 employees, who engaged in a strike prior to the closure, were subsequently computed at P164,984.00. Up to September 1976, the union filed about ten (10) motions for execution against the corporation, but none could be implemented, presumably for failure to find leviable assets of said corporation. In its last motion for execution, the union asked that officers and agents of the company be held personally liable for payment of the backwages. This was granted by the labor arbiter. In the corporation's appeal to the NLRC, one of the issues raised was: "Is the judgment against a corporation to reinstate its dismissed employees with backwages, enforceable against its officer and agents, in their individual, private and personal capacities, who were not parties in the case where the judgment was rendered?" The NLRC answered in the negative, on the ground that officers of a corporation are not liable personally for official acts unless they exceeded the scope of their authority.
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> On *certiorari*, this Court reversed the NLRC and upheld the labor arbiter. In imposing joint and several liability upon the company president, the Court

In reversing the NLRC and upholding the decision of the Labor Arbiter, the Court, in determining who can be held liable for violating the pertinent provisions of the Labor Code when the employer is a corporation, applied the definition of employer under the Labor Code which was culled from R.A. No. 602 or the Minimum Wage Law, that is, "any person acting in the interest of an employer, directly or indirectly."[32]

Thus, in *A.C. Ransom*, the one held responsible and thus adjudged solidarily liable to pay the dismissed employees is its President. Thus, said the Court:

> "The record does not clearly identify "the officer or officers" of RANSOM directly responsible for failure to pay the back wages of the 22 strikers. In the absence of definite proof in that regard, we believe it should be presumed that the responsible officer is the President of the corporation who can be deemed the chief operation officer thereof. Thus, in RA 602, criminal responsibility is with the "Manager or in his default, the person acting as such." In RANSOM, the President appears to be the Manager.
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> Considering that non-payment of the back wages of the 22 strikers has been a **continuing situation,** it is our opinion that the personal liability of the RANSOM President, at the time the back wages were ordered to be paid should also be a continuing joint and several personal liabilities of all who may have thereafter succeeded to the office of president; otherwise, the 22 strikers may be deprived of their rights by the election of a president without leviable assets."[33]

Naguiat case[34]

In *Naguiat*, the facts of the case are hereby summarized as follows:

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[32] Art. 212 (c), Labor Code

[33] Supra. footnote 28

[34] **"Sergio F. Naguiat, doing business under the name and style Sergio F. Naguiat Enterprises, Inc., & Clark Field Taxi, Inc., *Petitioners*, v. National Labor Relations Commission (Third Division), National Organization of Workingmen and its members, Leonardo T. Galang, et al., *Respondents"* (Third Division, *J. Panganiban*), G.R. No. 116123. March 13, 1997**

Respondent Clark Field Taxi Corporation or CFTI held a concessionaire contract to operate taxi services within Clark Air Base. Due to the phase out of the US military bases including Clark, the services of the individual respondents as taxicab drivers were terminated in Nov. 1991.

Based on the agreement had during the negotiations between the drivers' union and CFTI, the drivers will be given P500. for every year of service as severance pay. Several drivers accepted the amount except the individual respondents who joined another organization (respondent National Organization of Workingmen) and later filed a complaint before the NLRC, for payment of separation pay. The Labor Arbiter rendered judgment ordering CFTI to pay P1,200 (instead of the originally agreed P500.) for every year of service, not as separation pay (since the closure was due to force majeure) but for "humanitarian considerations.

On appeal, the NLRC modified the decision by ordering petitioners to pay separation pay of ½ month pay (i.e., $120.) for every year of service. The NLRC adjudged as solidarily liable Sergio and Antolin Naguiat, the father/President and son/Vice-President & General Manager, respectively.

One of the principal arguments adduced by petitioners is that they were denied due process in that even though they were not impleaded as parties in the proceedings before the labor arbiter, they were declared solidarily liable with the corporation.

In ruling against petitioners, the Supreme Court applied *A.C. Ransom*[35] and came up with the following ratiocinations:

"We advert to the case of A.C. Ransom once more. The officers of the corporation were not parties to the case when the judgment in favor of the employees was rendered. The corporate officers raised this issue when the labor arbiter granted the motion of the employees to enforce the judgment against them. In spite of this, the Court held the corporation president solidarily liable with the corporation.

Sergio F. Naguiat, admittedly, was the president of CFTI who actively managed the business. Thus, applying the ruling in A. C. Ransom, he falls within the meaning of an "employer" as contemplated by the Labor Code, who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees.

Moreover, petitioners also conceded that both CFTI and Naguiat Enterprises were "close family corporations" 34 owned by the Naguiat family. Section 100, paragraph 5, (under Title XII on Close Corporations) of the Corporation Code, states:

"(5) To the extent that the stockholders are actively engaged in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance."

It is thus clear the said provision of the Corporation Code specifically imposes personal liability upon the stockholder actively managing or operating the business and affairs of the close corporation.

Nothing in the records show whether CFTI obtained "reasonably adequate liability insurance;" thus, what remains is to determine whether there was corporate tort.

Our jurisprudence is wanting as to the definite scope of "corporate tort." Essentially, "tort" consists in the violation of a right given or the omission of a duty imposed by law. Simply stated, tort is a breach of a legal duty Article 283 of the Labor Code mandates the employer to grant separation pay to employees in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, which is the condition obtaining at bar. CFTI failed to

[35] Supra., footnote 29

comply with this law-imposed duty or obligation. Consequently, its stockholder who was actively engaged in the management or operation of the business should be held personally liable.

Furthermore, in MAM Realty Development v. NLRC, the Court recognized that a director or officer may still be held solidarily liable with a corporation by specific provision of law. Thus:

". . . A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

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4. When a director, trustee or officer is made. by specific provision of law, personally liable for his corporate action." (footnotes omitted)

Furthermore, Sergio and Antolin Naguiat **voluntarily submitted themselves to the jurisdiction of the labor arbiter when they, in their individual capacities, filed a position paper** together with CFTI, before the arbiter. They cannot now claim to have been denied due process since they availed of the opportunity to present their positions.

In fact, in posting the **surety bond** required by this Court for the issuance of a temporary restraining order enjoining the execution of the assailed NLRC Resolutions, only **Sergio F. Naguiat, in his individual and personal capacity, principally bound himself to comply with the obligation** thereunder, i.e., "to guarantee the payment to private respondents of any damages which they may incur by reason of the issuance of a temporary restraining order sought, if it should be finally adjudged that said principals were not entitled thereto."

Kukan Int'l Corp. case[36]

The facts of the case can be summarized as follows:

Private respondent Morales was awarded a contract for the supply and installation of signages in a building located in Makati. Despite having complied with his obligations under the contract, Morales was not fully paid of his fees. Thus, he filed a case against Kukan for collection of sum of money.

After trial, the lower court rendered judgment ordering Kukan to pay Morales principal sum plus interest, moral damages and attorney's fees.

After the sheriff had levied personal properties located inside the offices of Kukan, Kukan International Corp, filed an Affidavit Third Party Claim. The trial court dismissed the third party claim and adjudged Kukan and Kukan International as solidarily liable for the monetary portion of the judgment for being one and the same. On appeal, the Court of appeals affirmed the trial court.

[36] "Kukan International Corporation**, Petitioner**, vs. Hon. Amor Reyes, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 21, and Romeo M. Morales, doing business under the name and style "RM Morales Trophies and Plaques, **Respondents"** (First Division, *J. Velasco, Jr.*), G.R. No. 182729, September 29, 2010

The main issue is whether or not the trial court and the appellate courts erred in applying the doctrine of piercing the veil and even assuming it is applicable, whether or not Kukan International Corp. ("KIC") is denied of due process.

First, the Supreme Court ruled that the trial court did not properly acquire jurisdiction over KIC. Citing *La Naval Drug Corporation v. Court of Appeals*,[37] the High Court said:

> In *La Naval Drug Corporation v. Court of Appeals*, the Court essentially ruled and elucidated on the current view in our jurisdiction, to wit: "[A] special appearance before the court—challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds—is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court."[38]
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> In the instant case, KIC was not made a party-defendant in Civil Case No. 99-93173. Even if it is conceded that it raised affirmative defenses through its aforementioned pleadings, KIC never abandoned its challenge, however implicit, to the RTC's jurisdiction over its person. The challenge was subsumed in KIC's primary assertion that it was not the same entity as Kukan, Inc. Pertinently, in its Comment and Opposition to Plaintiff's Omnibus Motion dated May 20, 2003, KIC entered its "**special but not voluntary appearance**" alleging therein that it was a different entity and has a separate legal personality from Kukan, Inc. And KIC would consistently reiterate this assertion in all its pleadings, thus effectively resisting all along the RTC's jurisdiction of its person. It cannot be overemphasized that KIC could not file before the RTC a motion to dismiss and its attachments in Civil Case No. 99-93173, precisely because KIC was neither impleaded nor served with summons. Consequently, KIC could only assert and claim through its affidavits, comments, and motions filed by special appearance before the RTC that it is separate and distinct from Kukan, Inc. (Emphasis supplied)

Pacific Rehouse **case**[39]

In *Pacific Rehouse*, the Regional Trial Court (RTC) ratiocinated that being one and the same entity in the eyes of the law, the service of summons upon EIB Securities, Inc. (E-Securities) has bestowed jurisdiction over both the parent and wholly-owned subsidiary. The RTC cited the cases of *Sps. Violago v. BA Finance Corp. et al.*[40] and *Arcilla v. Court of Appeals*[41] where the doctrine of piercing the veil of corporate fiction was applied notwithstanding that the affected corporation was not brought to the court as a party.

Citing *Kukan*[42], the Supreme Court said:

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[37] G.R. No. 103200, August 31, 1994

[38] *Garcia v. Sandiganbayan*, G.R. Nos. 170122 & 171381, October 12, 2009

[39] "Pacific Rehouse Corporation, **Petitioners**, vs. Court of Appeals and Export and Industry Bank, Inc., **Respondents"**, G.R. No. 199687, March 24, 2014 (consolidated with "Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation and East Asia Oil Company, Inc., **Petitioners**, vs. Export and Industry Bank, Inc., **Respondent"**), First Division, *J. Reyes*, G.R. No. 201537, March 24, 2014

[40] 581 Phil. 62 (2008)

[41] G.R. No. 89804, October 23, 1992

[42] Supra. footnote 34

> The Court already ruled in *Kukan International Corporation v. Reyes* that compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction, to wit:
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> The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put**, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction**. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. (Emphasis supplied)
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> xxx
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> As Export Bank was neither served with summons, nor has it voluntarily appeared before the court, the judgment sought to be enforced against E-Securities cannot be made against its parent company, Export Bank. Export Bank has consistently disputed the RTC jurisdiction, commencing from its filing of an Omnibus Motion by way of special appearance during the execution stage until the filing of its Comment before the Court wherein it was pleaded that "RTC [of] Makati[, Branch] 66 never acquired jurisdiction over Export [B]ank. Export [B]ank was not pleaded as a party in this case. It was never served with summons by nor did it voluntarily appear before RTC [of] Makati[, Branch] 66 so as to be subjected to the latter's jurisdiction."

As for the two (2) cases cited by the trial court in support of its decision, the High Tribunal, in *Violago,* said that although the corporation VMSC was not made a third party defendant, the person who was found liable in Avelino, was properly made a third party defendant in the first instance. On the other hand, in *Arcilla*, the Supreme Court enunciated that although the corporation CMRI was not a party to the suit, it was Arcilla, the defendant himself who was found ultimately liable for the judgment award. CMRI and its properties were left untouched from the main case, not only because of the application of the *alter ego* doctrine, but also because it was never made a party to that case. In other words, it is the officer Arcilla himself who was made a party to the case and not the corporation.

B. Analysis

1. **This doctrine is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction.**

Based on the foregoing relevant cases, it would seem, albeit *prima facie*, that our Supreme Court has been either strict or has been lenient in dealing with the issue on the denial of due process that may ensue from the application of the doctrine of piercing the veil.

However, a more thorough review of these and other relevant cases would reveal that such is not necessarily the matter at hand. For the avoidance of doubt, as regards the issue on whether or not the application of the doctrine would allow the consequent denial of due process, the basic rule, as enunciated in *Kukan*[43] and reiterated in *Pacific Rehouse,*[44] is quite clear. Thus ---

> The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put**, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction**. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. (Emphasis supplied)

It is thus beyond any doubt that whenever any one or more of the three basic areas[45] that would justify the application of the doctrine of piercing the veil would be present, our courts should make sure that its application would not result in a denial of due process on the part of any party who would be made liable pursuant to such doctrine. Simply put, it is imperative that the court should have first acquired jurisdiction over any party who would eventually be held liable pursuant to the application of such doctrine.

2. In A.C. Ransom, even though the court technically did not acquire jurisdiction over the persons of the then current and future presidents of the corporation, there are enough legal bases for their being held liable for the obligations of the corporation.

In *A. C. Ransom,*[46] as heretofore stated, one of the two main issues which is apropos to the matter at hand is whether or not the judgment against the corporation is enforceable against its officers and agents in their personal capacities even though they were not parties in the case where the judgment was rendered.

In ruling the said issue in the affirmative, it would seem at the onset that the High Court had deprived the officers concerned of their constitutional right to due process when they were found to be solidarily and personally liable with the corporation for the back wages of the 22 strikers even though these officers were not parties to the case where the final judgment originated from.

However, consistent with the totality rule, a reading of the whole parts of the decision would indubitably show that such an observation is more apparent than real. Verily, there are several significant bases and justifications for declaring the officers concerned to be personally liable, i.e.,

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[43] Supra. footnote 35

[44] Supra. footnote 38

[45] Supra., see footnotes 13 to 16

[46] Supra., footnote 29

Ruben Hernandez, who was President of RANSOM in 1974, together with other Presidents of the same corporation who had been elected as such after 1972 or up to the time the corporate life was terminated.

Such bases or justifications can be summarized in the following manner:

First, under Art. 265 of the Labor Code, a dismissed employee due to an unlawful lockout shall be entitled to full back wages;

Consequently, under Art. 273, any person violating the aforesaid provisions shall be penalized with a fine and/or imprisonment;

The next question then that the Court, speaking through Justice Melencio-Herrera, had posed for its consideration is how can those provisions be implemented when the employer is a corporation? The answer is found in Art. 212 (c) which was culled from Section 2 of R.A. 602 or the Minimum Wage Law, i.e., an employer includes any person acting in the interest of the employer, directly or indirectly;

Under Section 15 (b) of the Minimum Wage Law, when any violation of the said law is committed by a corporation, the manager or the person acting as such when the violation took place shall be held responsible. In the same vein, under P.D. 525, where a corporation fails to pay the emergency allowance therein provided, the penalty as be imposed upon the guilty officer/s;

And since the record does not clearly identify "the officer or officers" of RANSOM directly responsible for failure to pay the back wages of the 22 strikers, the High Court presumed that the responsible officer is the president of the corporation who can be deemed the chief operation officer thereof;

And, finally, considering that non-payment of the back wages of the 22 strikers has been a continuing situation, the Court ruled that the personal liability of the RANSOM President, at the time the back wages were ordered to be paid should also be a continuing joint and several personal liabilities of all who may have thereafter succeeded to the office of president; otherwise, the 22 strikers may be deprived of their rights by the election of a president without leviable assets.

A careful consideration of the foregoing circumstances obtaining in the case would reveal that even though the court technically did not acquire jurisdiction over the persons of the then current and future presidents of the corporation, there are enough legal bases for their being held personally liable for the obligations of the corporation without necessarily violating their constitutional right to due process.

2. In Naguiat, even though the labor arbiter did not acquire jurisdiction over the person of the president of the respondent corporation, there are likewise several legal and factual bases that would support the legality of the finding of personal liability on the part of the president.

In *Naguiat*, even though the labor arbiter did not acquire jurisdiction over the person of the president of the respondent Clark Field Taxi Corporation ("CFTI"), there are likewise several legal

and factual bases that have been considered and affirmed by the High Court if only to obliviate any doubt as to the legality of the finding of personal liability on the part of the president.

These bases, as culled from the *ponencia* of the case, may be summarized as follows:

Sergio F. Naguiat, admittedly, was the president of the CFTI who actively managed the business. Applying the ruling in *A. C. Ransom*[47], he falls within the meaning of an "employer" as contemplated by the Labor Code, who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees;

Moreover, petitioners also conceded that both CFTI and the other family corporation, Naguiat Enterprises were "close family corporations" owned by the Naguiat family. Section 100[48], paragraph 5, (under Title XII on Close Corporations) of the Corporation Code, states:

> "(5) To the extent that the stockholders are actively engaged in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance."

Art. 283 of the Labor Code mandates the employer to grant separation pay to employees in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses. CFTI, which failed to comply with this law-imposed duty or obligation, is deemed to have committed tort. Consequently, its stockholder who was actively engaged in the management or operation of the business should be held personally liable.

Furthermore, the High Court applied the ruling in *MAM Realty Development v. NLRC*[49] where the Court recognized that a director or officer may still be held solidarily liable with a corporation by specific provision of law. Thus:

> "4. When a director, trustee or officer is made. by specific provision of law, personally liable for his corporate action."
>
> 5. Sergio and Antolin Naguiat were also deemed to have voluntarily submitted themselves to the jurisdiction of the labor arbiter when they, in their individual capacities, filed a position paper together with CFTI, before the arbiter. The Court said they cannot now claim to have been denied due process since they availed of the opportunity to present their positions;
>
> 6. And, finally, in posting the surety bond required for the issuance of a temporary restraining order enjoining the execution of the assailed NLRC Resolutions, the president Sergio F. Naguiat, in his individual and personal capacity, principally bound himself to comply with the obligation thereunder, i.e., "to guarantee the payment to private respondents of any damages which they may incur by reason of the issuance of a temporary restraining order sought, if it should be finally adjudged that said principals were not entitled thereto."

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[47] Supra.

[48] Now Sec. 99 of R.A. No. 11232 otherwise known as the Revised Corporation Code of the Philippines, signed into law by President Duterte on Feb. 20, 2019 and took effect on Feb. 23, 2019

[49] G.R. No. 114787 June 2, 1995

III. CONCLUSION AND RECOMMENDATION

For good measure, we reiterate the following rule as amply enunciated by the Supreme Court as regards when the doctrine of piercing the veil may properly be applied. Thus, it is not sufficient that there is the presence of one or more of the three (3) basic areas[50] that would justify its application. The courts must likewise materially consider and comply with the following jurisprudential precedents:

The doctrine is applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Thus, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. If the court has not acquired jurisdiction over the corporation or the officer/director concerned, any proceedings taken against that corporation and its property would infringe on its right to due process;[51]

The wrongdoing must be clearly and convincingly established[52];

The application of the doctrine is frowned upon and should be done with caution. The wrongdoing cannot be presumed, otherwise an injustice that was never intended may result from an erroneous application[53];

The corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons[54];

The presumption is that the stockholders, directors and officers are separate and distinct from the corporation itself and that the burden of proving otherwise lies upon the party seeking to have the court pierce the veil.[55]

Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when

1) He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith, or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

2) He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

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[50] Supra notes 13 to 16.

[51] *Kukan Int'l Corp.*and *Pacific Rehouse* cases; Supra notes 35 and 38.

[52] See Matuguina Integrated Wood Products, Ins. vs. Court of Appeals, G.R. No. 98310, Oct. 24, 1996; Complex Electronics Employees Association vs. NLRC, G.R. Nos. 121315 and 122136, July 19, 1999; Solidbank Corporation vs. Mindanao Ferroalloy Corporation, G.R. No. 153535, July 28, 2005; China Banking Corporation vs. Dyne-Sem Electronics Corporation, G. R. 149237, June 11, 2006

[53] See Heirs of Fe Tan Uy vs. International Exchange Bank, G.R. No. 166282, June 16, 2019

[54] See Philippine National Bank vs. Hydro Resources Contractors Corporation, G.R. No. 167530, Mar. 13, 2013;
In the case of *Umali vs. Court of Appeals*, G.R. No. 89561, Sep. 13, 1990, it was ruled that even if fraud is established, this fact alone is not sufficient to justify the piercing of the corporate fiction where it is not sought to hold the officers and stockholders personally liable for corporate debt. Thus, where the petitioners are merely seeking the declaration of the nullity of a foreclosure sale, piercing the corporate veil is not the proper remedy, for such relief may be obtained having to disregard the legal corporate entity, and this is true even if grounds exist to prove it.

[55] See Ramoso vs. Court of Appeals, G.R. No. 117416, Dec. 8, 2000; also Land Bank of the Philippines vs. Court of Appeals, G.R. No. 127181, Sep. 4, 2001 (citing Complex Electronics Employees Association vs. NLRC, supra.)

3) He agrees to hold himself personally and solidarily liable with the corporation; or

4) He is made, by a specific provision of law, to personally answer for his corporate action.[56]

Thus, in those cases wherein the trial court in applying the doctrine had denied due process on the part of the party declared to be liable or wherein the lower court had contravened any one or more of the foregoing rules, our Supreme Court has been consistent in reversing and setting aside the application of the doctrine made by the court *a quo*.[57]

Under the premises, it would therefore be highly advisable for the High Court to further solidify and strengthen the continuous training and education of judges stationed in trial courts all over the country which are especially designated as commercial courts. Specifically, these judges must be reminded time and again about the foregoing rules enunciated by our Supreme Court that would ensure that its primordial objective of averting inequity and injustice is ultimately and completely attained not only on the part of the parties to a case but equally important, on the part of those who were not made parties to a case or those over whom the courts did not acquire jurisdiction.

Finally, it would do well to end this Paper by quoting the pertinent portions of the decision of our Supreme Court in the case of *Land Bank of the Philippines vs. the Court of Appeals, Eco Management Corporation and Emmanuel C. Oate*[58] penned by then Justice Leonardo Quisumbing of the Court's Second Division. These quoted portions very well constitute a summary of the nature, rationale, bases and limitations of this equitable doctrine of piercing the veil of corporate fiction, thus:

> "A corporation, upon coming into existence, is invested by law with a personality separate and distinct from those persons composing it as well as from any other legal entity to which it may be related.[59] By this attribute, a stockholder may not, generally, be made to answer for acts or liabilities of the said corporation, and vice versa.[60] This separate and distinct personality is, however, merely a fiction created by law for convenience and to promote the ends of justice.[61] For this reason, it may not be used or invoked for ends subversive to the policy and purpose behind its creation[62] or which could not have been intended by law to which it owes its being.[63] This is particularly true when the fiction is used to defeat public convenience, justify wrong, protect fraud, defend crime, confuse legitimate legal or judicial issues,[64] perpetrate deception or otherwise circumvent the law.[65] This is likewise true where the corporate entity is being used as an alter ego, adjunct, or business conduit for the sole benefit of the

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56 Tramat Mercantile, Inc. and David Ong vs. Court of Appeals, et. al., G.R. No. 111008, Nov. 7, 1994; see also Abbott Lab., Phils. et. al. vs. Pearle Alcaraz, G.R. No. 192571, Apr. 22, 2014

57 See footnotes 51 to 55; see also *MAM Realty Dev. Corp. and Manuel Centeno vs. NLRC, et. al.,* G. R. No. 114787, June 2, 1995

58 Supra note 54.

59 Citing Yutivo Sons Hardware Company vs. Court of Tax Appeals, 1 SCRA 160, 165 (1961); Francisco Motors Corporation vs. CA, 309 SCRA 72, 82 (1999)

60 Citing NAMARCO vs. Associated Finance Company, 19 SCRA 962, 965 (1967)

61 Citing Azcor Manufacturing, Inc. vs. NLRC, 303 SCRA 26, 35 (1999)

62 Citing *Emilio Cano Enterprises Inc., vs. CIR*, 121 Phil. 276, 278-279 (1965)

63 Citing *McConnel vs. Court of Appeals*, 1 SCRA 722, 725 (1961)

64 Citing *R.F. Sugay & Co. vs. Reyes*, 120 Phil. 1497, 1502 (1964)

65 Citing Gregorio Araneta, Inc. vs. Paz Tuason de Paterno, 49 O.G. 45, 56 (1953)

stockholders or of another corporate entity.[66] In all these cases, the notion of corporate entity will be pierced or disregarded with reference to the particular transaction involved.[67]

The burden is on petitioner to prove that the corporation and its stockholders are, in fact, using the personality of the corporation as a means to perpetrate fraud and/or escape a liability and responsibility demanded by law. In order to disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established.[68] In the absence of any malice or bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilitie

[66] Citing Comm. Internal Revenue vs. Norton Harrison Corp., 120 Phil. 684, 690-691 (1964)

[67] Citing *Koppel, Inc. vs. Yatco*, 77 Phil. 496, 505 (1946)

[68] Citing Complex Electronics Employees Association vs. National Labor Relations Commission, 310 SCRA 403, 418 (1999), see supra.